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18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**
 20 **SAN FRANCISCO DIVISION**

21 MAX ULRICH and RYAN SCHAVRIEN,
 22 individually and on behalf of all others
 23 similarly situated,

24 Plaintiffs,
 25
 26 v.
 27 ABBOTT LABORATORIES,
 28 Defendant.

28 Case No. 3:24-cv-09452-RFL

29 **DEFENDANT ABBOTT**
 30 **LABORATORIES' NOTICE OF MOTION**
 31 **AND MOTION TO DISMISS**
 32 **PLAINTIFFS' CLASS ACTION**
 33 **COMPLAINT**

34 Date: June 10, 2025
 35 Time: 10:00 AM
 36 Courtroom: 15
 37 Hon. Rita F. Lin

1 **NOTICE OF MOTION AND MOTION**2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that on June 10, 2025, at 10:00 A.M., or as soon thereafter as
 4 the matter may be heard in the United States District Court for the Northern District of California,
 5 Courtroom 15, Defendant Abbott Laboratories (“Abbott”) will and hereby does move this Court
 6 for an order in the above-captioned action dismissing Plaintiffs Max Ulrich’s and Ryan
 7 Schavrien’s Class Action Complaint with prejudice, pursuant to Rules 12(b)(1) and 12(b)(6) of the
 8 Federal Rules of Civil Procedure, on the basis that the matter is subject to dismissal under the first-
 9 to-file rule and the prohibition on claim-splitting, and for failure to state a claim upon which relief
 10 can be granted as well as for lack of standing for injunctive relief. This Motion is based on this
 11 Notice, the supporting Memorandum of Points and Authorities, the complete files and records in
 12 this action, and any additional material and arguments as may be considered in connection with
 13 the hearing.

14 Through this Motion, Abbott respectfully requests that the Complaint be dismissed with
 15 prejudice.

16

17 Dated: February 28, 2025

Respectfully submitted,

18

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 William J. Trach
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By /s/ William J. Trach
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This product labeling case involves two distinct Abbott products. The first is Similac Go & Grow, a toddler drink intended for children aged 1–3. The second is PediaSure, a nutritional supplement primarily intended for children aged 2–13.

6 Plaintiffs allege that both products' labels include certain statements that are false or
7 misleading. On the substance, Plaintiffs are dead wrong, as explained below. But the threshold
8 problems for Plaintiffs are procedural. As for Similac Go & Grow, Plaintiffs' claims and their
9 proposed class overlap with those in an earlier-filed action pending in the Eastern District of
10 California, *Gutierrez v. Abbott Laboratories*. Under Ninth Circuit precedent recognizing the
11 importance of preserving judicial resources and avoiding inconsistent judgments, this later-filed
12 action should be dismissed under the first-to-file rule. As for PediaSure, both Plaintiffs are part of
13 certified classes of California PediaSure purchasers whose overlapping claims are being
14 adjudicated in a California state court action, *VanCleave v. Abbott Laboratories*. Indeed, just last
15 week, a jury returned a complete defense verdict for Abbott on those claims, finding that
16 PediaSure's labeling is not false or misleading. Under the well-established doctrine precluding
17 claim-splitting, Plaintiffs are barred from taking a second bite of the apple here.

18 Were those procedural defects not enough, Plaintiffs' claims fail for several substantive
19 reasons too. *First*, none of Plaintiffs' three liability theories is adequately pleaded under Federal
20 Rule of Civil Procedure 12(b)(6), much less under Rule 9(b). *Second*, and independently,
21 Plaintiffs' injunctive relief claims fail for lack of standing because Plaintiffs fail to adequately
22 allege any real or immediate threat that they will be wronged again and, separately, because
23 Plaintiffs have not plausibly alleged facts showing the absence of an adequate remedy at law.

24 Abbott therefore respectfully requests that the Court dismiss the Complaint.

II. BACKGROUND

A. The products.

27 Abbott is an Illinois-based healthcare company that manufactures, markets, and distributes
28 a variety of medical devices, nutrition supplements, and other products. Compl. ¶ 31. Among

1 those is Similac Go & Grow, a milk-based toddler drink intended for children 12–36 months old.
 2 Similac Go & Grow's ingredients and benefits are expressly set out on its label. *See* Ex. A (Go &
 3 Grow Labels).¹ For example, Similac Go & Grow's label states that it contains "DHA," "Lutein,"
 4 and "Vitamin E"—because it does. *Id.* The label also states that it contains, via two servings, "28
 5 Important Nutrients for Growth and Development"—again, because it does. *Id.* The label also
 6 includes the federally mandated Nutrition Facts Panel, which sets out precisely what Similac Go
 7 & Grow contains and how much, in percentage terms, each nutrient contributes to a daily diet. *Id.*
 8 For example, the Nutrition Facts Panel on Similac Go & Grow 360 Total Care says exactly how
 9 many grams of total sugars the product contains (7 grams), how many of those grams are from
 10 added sugar (4 grams), and how much that contributes to a daily diet (16% per serving). *Id.*

11 Also among Abbott's products is PediaSure, a nutrition supplement primarily intended for
 12 children over two. Compl. ¶ 19; Ex. B (PediaSure Labels). The base product, PediaSure Grow &
 13 Gain, is primarily designed to support caloric needs for children behind in growth and to help fill
 14 nutritional gaps in kids' diets. *See* Ex. B. PediaSure Grow & Gain contains both macronutrients
 15 (protein, fat, and carbohydrates) and micronutrients (vitamins and minerals). *Id.* In the latter
 16 category, PediaSure Grow & Gain contains 27 vitamins and minerals. *Id.* Accordingly, PediaSure
 17 Grow & Gain's label states that it is "Complete, Balanced Nutrition" (because it is), that it contains
 18 "DHA" (because it does), and that it is the "#1 Pediatrician Recommended Brand" (because survey
 19 evidence shows as much). *Id.* And, just like Similac Go & Grow products, all PediaSure products
 20 also include the Nutrition Facts Panel on every single label, and every Nutrition Facts Panel sets
 21 out how much added sugar the product contains. *Id.*

22 **B. Plaintiffs' claims.**

23 Plaintiffs Max Ulrich and Ryan Schavrien are California residents who purport to sue on
 24 behalf of a putative nationwide class and a California subclass of Similac Go & Grow and
 25 PediaSure purchasers. Compl. ¶¶ 29–30. Plaintiff Ulrich claims that he purchased Similac Go &
 26

27 ¹ The Court may consider the products' labels attached as exhibits hereto because the Complaint
 28 includes portions thereof, *see* Compl. ¶¶ 17, 20, such that the full labels are incorporated by
 reference. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001).

1 Grow between mid-2021 and mid-2022 and that he purchased PediaSure in early 2023. *Id.* ¶ 29.
 2 Plaintiff Schavrien alleges that he purchased PediaSure between 2016 and April 2024. *Id.* ¶ 30.
 3 Schavrien does not allege that he ever purchased Similac Go & Grow. *See generally id.*

4 Across the two products, Plaintiffs challenge labeling statements under three liability
 5 theories. *Id.* ¶ 21.² The first liability theory attacks certain labeling statements on both products
 6 that are allegedly false or misleading in light of the products' added sugar content. *Id.* The second
 7 liability theory challenges statements on both products involving the ingredient docosahexaenoic
 8 acid ("DHA"), an omega-3 fatty acid. *Id.* The third liability theory disputes the statement "#1
 9 Pediatrician Recommended Brand," which appears only on PediaSure products. *Id.* Specifically:

Liability Theory	Similac Go & Grow Challenged Labeling Statements	PediaSure Challenged Labeling Statements
Added Sugar Theory	<ul style="list-style-type: none"> • "Toddler Drink" (¶¶ 16, 42) • "360 Total Care" (¶¶ 16, 42) • "12-36 months" (¶¶ 16, 42) 	<ul style="list-style-type: none"> • "Complete, Balanced Nutrition" (¶¶ 19, 42) • "Balanced Nutrition to Help Fill Gaps" (¶¶ 19, 42)
DHA Theory	<ul style="list-style-type: none"> • "DHA" (¶¶ 16, 42) • "Brain Development" (¶¶ 16, 42) 	<ul style="list-style-type: none"> • "DHA Omega-3" (¶¶ 19, 42)
"#1 Pediatrician Recommended Brand" Theory	None	<ul style="list-style-type: none"> • "#1 Pediatrician Recommended Brand" (¶¶ 19, 42)

21 Both Plaintiffs allege that they overpaid for the products because of these allegedly false
 22 or misleading labeling statements. *Id.* ¶¶ 29–30. Plaintiffs assert claims under a trio of California
 23 statutes: the False Advertising Law ("FAL"), the Consumer Legal Remedies Act ("CLRA"), and

24

25 ² The Complaint also references statements that appeared on two Abbott websites,
 26 www.pediasure.com and www.similac.com. Compl. ¶ 43. But Plaintiffs do not include those
 27 statements as part of their definition of "Challenged Representations." *Id.* ¶ 42. Further, there is
 28 no allegation that Plaintiffs so much as saw, let alone relied upon, on any of the referenced website
 statements. *See generally id.* Nor do Plaintiffs so much as allege that these website statements
 are false or misleading. *Id.* Rather, Plaintiffs include these not as challenged statements
 themselves but rather merely in an attempt to "demonstrate[e] the company's intent and knowledge
 that such claims are material to consumers." *Id.* ¶ 43.

1 the Unfair Competition Law (“UCL”). *Id.* ¶¶ 97, 113, 137. They also assert warranty and unjust
 2 enrichment claims. *Id.* ¶¶ 146-148; 156. Plaintiffs seek monetary and injunctive relief. *Id.* ¶ 158.

3 **C. Overlapping, first-filed cases.**

4 This is not the only or even the first case with respect to either product’s labeling asserting
 5 claims brought on behalf of California purchasers.

6 **Gutierrez - Similac Go & Grow:** In September 2024, Plaintiff Alana Gutierrez filed a
 7 putative class action regarding the labeling of Similac Go & Grow in the Eastern District of
 8 California. *See Gutierrez et. al v. Abbott Lab’ys*, 2:24-CV-02427-TLN-SCR. The plaintiff in
 9 *Gutierrez* alleges that seven statements on Similac Go & Grow labels are misleading—as here.
 10 Gutierrez Compl. ¶ 37.³ Among those challenged statements are references to “DHA” and “Brain
 11 Development”—as here. *Id.* Among the liability theories in *Gutierrez* is that Similac Go & Grow
 12 contains too much added sugar—as here. *Id.* ¶ 51. The plaintiff in *Gutierrez* asserts claims under
 13 the CLRA, UCL, and FAL, as well as a claim for unjust enrichment—as here. *Id.* ¶¶ 98, 135. And
 14 the plaintiff in *Gutierrez* purports to bring suit on behalf of a putative class of California
 15 consumers—again, as here. *Id.* ¶¶ 71-72. Abbott’s motion to dismiss the *Gutierrez* Complaint is
 16 pending.

17 **VanCleave - PediaSure:** In May 2019, Plaintiff Elizabeth VanCleave (later joined by
 18 Plaintiff Katherine Hassan) filed a class action regarding the labeling of PediaSure in California
 19 state court in Santa Clara County. *See VanCleave et. al v. Abbott Lab’ys*, Case No. 19CV345045.
 20 Plaintiffs there allege that certain statements on PediaSure labels are misleading—as here. *See*
 21 *VanCleave* First Amended Complaint (“FAC”) ¶ 3. Among those challenged statements are
 22 “Complete, Balanced Nutrition” and “Balanced Nutrition to Help Fill Gaps”—as here. *Id.* And,
 23 while it was dismissed via motion practice, Plaintiffs previously alleged claims based on the
 24 labeling statement “#1 Pediatrician Recommended Brand”—as here. *See VanCleave*, Demurrer
 25 and Motion to Strike Opinion and Order at 7, 14 (Dec. 23, 2019). The liability theory in *VanCleave*
 26

27 ³ Courts may take judicial notice of pleadings in similar cases because such documents are part of
 28 the public record and have a direct relation to the matters at issue. *See United States. ex rel.*
Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992).

1 is that PediaSure contains too much added sugar—as here. *VanCleave* FAC ¶ 136. Plaintiffs in
 2 *VanCleave* assert claims under the CLRA, UCL, and FAL, as well as warranty claims and an unjust
 3 enrichment claim—as here. *Id.* ¶ 18. And not only do plaintiffs in *VanCleave* purport to represent
 4 classes of California PediaSure purchasers—again, as here—but the court in *VanCleave* certified
 5 several such classes. *See VanCleave*, Class Cert. Order at 7–9 (Apr. 5, 2024). To the extent they
 6 purchased PediaSure where and when they say they did, Plaintiffs Schavrien and Ulrich are
 7 members of one or more of those certified classes. *See Compl.* ¶¶ 29–30. Yet neither Plaintiff
 8 Schavrien nor Plaintiff Ulrich opted out of the *VanCleave* certified classes. *See generally Compl.*
 9 (nowhere alleging that either Plaintiff here opted out).⁴

10 In January and February 2025, the *VanCleave* case was tried to a California jury. *See*
 11 Docket, *VanCleave*, Case No. 19CV345045. Last week, the jury returned a full defense verdict in
 12 Abbott’s favor, wholly rejecting the certified classes’ claims that PediaSure’s labeling is false or
 13 misleading. *See VanCleave*, Verdict Form (Feb. 21, 2025). Among other findings, the jury found
 14 that labeling statements like “Complete, Balanced Nutrition” and “Nutrition to Help Fill Gaps”
 15 were true and that the product conformed to the label. *Id.* In so doing, the jury rejected the certified
 16 classes’ falsity theories, including that PediaSure has too much added sugar.

17 **III. STANDARD OF REVIEW**

18 Under Federal Rule of Civil Procedure 12(b)(6), dismissal is required where the complaint
 19 fails to state a cognizable legal theory or does not allege sufficient facts to support a cognizable
 20 legal theory. *Chubb Custom Ins. Co. v. Space Sys./Loral, Inc.*, 710 F.3d 946, 956 (9th Cir. 2013).
 21 To survive, a complaint “must contain sufficient factual matter” to “state a claim to relief that is
 22 plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*
 23 *Twombly*, 550 U.S. 544, 570 (2007)). Although courts generally must accept as true a complaint’s
 24 “well-pleaded facts,” courts need not accept “legal conclusions” or “[t]hreadbare recitals of the
 25 elements of a cause of action.” *Iqbal*, 556 U.S. at 678–79. Under the claim-splitting doctrine,
 26

27 ⁴ The deadline for class members to opt out of the certified classes in *VanCleave* was September
 28 3, 2024. *See* <https://www.pediasureclassactionlawsuit.com/Home/FAQ> (last visited Feb. 25, 2025).

1 cases are subject to 12(b)(6) dismissal where the standard is met, as explained below. *See Mendoza*
 2 *v. Amalgamated Transit Union Int'l*, 30 F.4th 879, 884 (9th Cir. 2022).

3 Because Plaintiffs' claims are grounded in fraud, they must also meet the heightened
 4 pleading standard under Federal Rule of Civil Procedure 9(b). *See Kearns v. Ford Motor Co.*, 567
 5 F.3d 1120, 1125 (9th Cir. 2009). Rule 9(b) requires a party alleging fraud to state with particularity
 6 the circumstances constituting that fraud. To satisfy this standard, the "complaint must identify
 7 the who, what, when, where, and how of the misconduct charged, as well as what is false or
 8 misleading about the purportedly fraudulent statement, and why it is false." *Salameh v. Tarsadia*
 9 *Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013) (citation and internal quotations omitted).

10 Under Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss based on
 11 lack of subject matter jurisdiction, including for lack of standing. *Chandler v. State Farm Mut.*
 12 *Auto. Ins. Co.*, 598 F.3d 1115, 1123 (9th Cir. 2010). To survive a Rule 12(b)(1) challenge, "the
 13 plaintiff must 'clearly . . . allege facts demonstrating' each element [of standing]" under Article
 14 III, Section 2 of the U.S. Constitution. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337–38 (2016)
 15 (quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)).

16 Finally, the first-to-file rule is a separate ground for dismissal that hinges on the multi-
 17 factor analysis described below. *See Young v. L'Oreal USA, Inc.*, 526 F. Supp. 3d 700, 704 (N.D.
 18 Cal. 2021). In applying the first-to-file rule, courts "maximize economy, consistency, and comity."
 19 *Id.* (citation and internal quotations omitted).

20 **IV. ARGUMENT**

21 **A. Plaintiffs' Similac Go & Grow claims should be dismissed under the first-to-
 22 file rule.**

23 The first-to-file rule is a well-recognized doctrine of federal comity pursuant to which
 24 federal district courts exercise discretion to decline jurisdiction over an action that involves similar
 25 parties and issues as an earlier-filed federal case. *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d
 26 93, 94–95 (9th Cir. 1982). The rule reduces burdens on the federal judiciary and prevents
 27 conflicting judgments. *See Wallerstein v. Dole Fresh Vegetables, Inc.*, 967 F. Supp. 2d 1289, 1292
 28 (N.D. Cal. 2013). Accordingly, courts should not "disregard[] lightly" the first-to-file rule.

1 *Koehler v. Pepperidge Farm, Inc.*, No.: 13-cv-02644-YGR, 2013 WL 4806895, at *2 (N.D. Cal.
 2 Sept. 9, 2013).

3 Courts in this Circuit consider three factors in considering motions brought under this rule:
 4 (1) the chronology of the actions, (2) the similarity of the parties, and (3) the similarity of the
 5 issues. *Manier v. L’Oreal USA, Inc.*, No. 2:16-CV-06886-ODW-KS, 2017 WL 59066, at *2 (C.D.
 6 Cal. Jan. 4, 2017) (citation omitted); *Kohn Law Grp., Inc. v. Auto Parts Mfg. Miss., Inc.*, 787 F.3d
 7 1237, 1240 (9th Cir. 2015) (affirming district court’s decision applying three-factor test). Here,
 8 all three factors support dismissing Plaintiffs’ Similac Go & Grow claims in light of the first-filed
 9 *Gutierrez* case.

10 **Chronology of the actions:** *Gutierrez* was filed well ahead of this case, on September 5,
 11 2024, three-plus months before Plaintiffs here filed suit. Compl. at 54. This factor thus favors
 12 dismissal. *See Pacesetter Sys.*, 678 F.2d at 95 (applying first-to-file rule to dismiss action filed
 13 three days after first-filed case).

14 **Similarity of the parties:** For this second factor to support dismissal, the parties need
 15 only be substantially similar. *See Kohn Law Grp.*, 787 F.3d at 1240 (first-to-file rule does not
 16 require exact identity of parties); *see Young*, 526 F. Supp. 3d at 705 (applying first-to-file rule to
 17 later-filed class action involving similar classes of purchasers).

18 Here, the Defendant is identical in the two actions: Abbott Laboratories. To be sure, the
 19 two cases are brought by different named Plaintiffs: Plaintiffs Schavrien and Ulrich in this case
 20 and Gutierrez in the earlier case. But all three are California residents who purportedly purchased
 21 Similac Go & Grow within the last four years. Compl. ¶¶ 29–30; *Gutierrez* Compl. ¶ 5. More to
 22 the point, though, the named Plaintiffs in both cases purport to represent overlapping classes of
 23 California consumers. This is critical, because courts look past the identity of the named plaintiffs
 24 and instead assess whether the classes in the two actions “represent *at least some* of the same
 25 individuals.” *Pedro v. Millennium Prod., Inc.*, 2016 WL 3029681, at *3–4 (N.D. Cal. May 27,
 26 2016) (emphasis added); *Ruff v. Del Monte Corp.*, No. C 12-05251 JSW, 2013 WL 1435230, at
 27 *3 (N.D. Cal. Apr. 9, 2013) (finding substantial similarity among putative classes in three
 28 complaints and applying first-to-file rule); *see also Wallerstein*, 967 F. Supp. 2d at 1296 (“Courts

1 have held that proposed classes in class action lawsuits are substantially similar where both classes
 2 seek to represent at least some of the same individuals.”). This standard is satisfied here, because
 3 the plaintiffs in both cases purport to represent classes of California purchasers of Similac Go &
 4 Grow in the last four years. *Compare* Compl. ¶ 70 (“All residents of California who, within four
 5 years prior to the filing of this action, purchased the Products containing the Challenged
 6 Representations on the Products’ labels for purposes other than resale.”), *with Gutierrez* Compl.
 7 ¶ 72 (“All persons in the State of California who purchased the Product between 2021 and the
 8 present.”).

9 Nor does it matter that Plaintiffs’ Complaint here also seeks a nationwide class of Similac
 10 Go & Grow purchasers. Compl. ¶ 70. Only some overlap in the proposed classes is required, and
 11 here the overlap is substantial. *See Pedro*, 2016 WL 3029681, at *3–4 (noting first-to-file rule’s
 12 focus on partial, rather than complete, overlap in alleged classes); *see also Young*, 526 F. Supp. 3d
 13 at 705 (finding sufficient overlap between a California class and a nationwide class and applying
 14 first-to-file rule). Further, it is highly unlikely that the Plaintiffs would even seek—let alone
 15 successfully certify—a nationwide class, because the Ninth Circuit has recognized that the material
 16 differences between California’s consumer protection laws and those of many other states
 17 “overwhelm common issues and preclude predominance for a single nationwide class.” *See Mazza*
 18 *v. Am. Honda Motor Co.*, 666 F.3d 581, 590–91, 596 (9th Cir. 2012) (vacating certification of
 19 nationwide class). This factor, too, favors dismissal.

20 **Similarity of the issues:** This final factor favors application of the first-to-file rule so long
 21 as the issues in the two cases, even if “not [] identical,” are “substantially similar.” *Kohn Law*
 22 *Grp.*, 787 F.3d at 1240. In determining whether the issues are substantially similar, courts focus
 23 on whether both actions share some “underlying factual allegations.” *See Zimmer v. Dometic*
 24 *Corp.*, 2018 WL 1135634, at *4 (C.D. Cal. Feb. 22, 2018); *Pedro*, 2016 WL 3029681, at *5
 25 (similar issues exist where “claims in the earlier and later-filed lawsuits implicate ‘common
 26 facts’”).

27 Here, the factual underpinnings of the allegations in *Gutierrez* and Plaintiffs’ Similac Go
 28 & Grow claims here are overwhelmingly alike. Both sets of claims center on the same product,

1 both cases challenge the same labeling statements, and both do so for the same reasons. Both
 2 complaints contend that Abbott's marketing and labeling of Similac Go & Grow is misleading.
 3 See *Gutierrez* Compl. ¶ 3 ("Defendants' misleading labeling caused Plaintiff and members of the
 4 class to pay a price premium for the Product") and see Compl. ¶ 23 (describing "Abbott's false,
 5 deceptive, and misleading claims"). Both Complaints focus on the alleged impact of Similac Go
 6 & Grow on children under two years old. See *Gutierrez* Compl. ¶ 2 ("The Product is harmful both
 7 nutritionally and developmentally for children under two") and see Compl. ¶ 21 ("These
 8 beverages, which are loaded with sugar, corn syrup, vegetable oils, and powdered milk, are
 9 harmful to toddlers' health"). Both complaints even allege that some of the same labeling
 10 statements are misleading and unlawful. See, e.g., *Gutierrez* Compl. ¶¶ 13–14, 37–41 (challenging
 11 "DHA" and "Brain Development"); Compl. ¶¶ 6–10 (same). This final factor, too, favors
 12 dismissal.

13 Courts commonly apply the first-to-file in similar circumstances. For example, in
 14 *Pacesetter*, the Ninth Circuit affirmed a district court's dismissal of a case on first-to-file grounds.
 15 678 F.2d at 96–97. There, the Ninth Circuit determined that both cases (1) involved the same three
 16 parties, (2) centered on the validity and enforceability of the same patents, and (3) differed
 17 substantively only in the remedy sought. *Id.* at 95–96. Similarly, in *Intersearch Worldwide, Ltd.*
 18 v. *Intersearch Group, Inc.*, the court dismissed the second filed action, explaining that "dismissal
 19 is proper where the court of first filing provides adequate remedies." 544 F. Supp. 2d 949, 963
 20 (N.D. Cal. 2008). There, the court found that all the requirements under the first-to-file rule were
 21 met when (1) the second filed matter was filed four months after the first, (2) the parties were
 22 sufficiently identical even though an additional defendant was added in the later case, and (3) the
 23 issues were sufficiently similar where, among other allegations, both cases pleaded unfair
 24 competition and requested similar relief. *Id.* at 958–59. Courts in this district have even
 25 acknowledged the applicability of the first-to-file rule to consumer labeling class actions like this
 26 one. See *Schwartz v. Frito-Lay N. Am.*, No. C-12-02740 EDL, 2012 WL 8147135, at *2–3 (N.D.
 27 Cal. Sept. 12, 2012) (applying first-to-file rule to later-filed, duplicative consumer class action
 28 centered on allegations that "All-Natural" label statements were misleading); *Young*, 526 F. Supp.

1 3d at 705 (granting defendant's first-to-file motion where issues were "virtually identical"). This
 2 case should be no different.

3 Dismissal is the appropriate remedy here because the goal of judicial efficiency will be
 4 best served by this Court declining to accept jurisdiction and because the two cases seek the same
 5 remedies (monetary and injunctive relief). *See Intersearch Worldwide, Ltd.*, 544 F. Supp. 2d 949
 6 at 963 ("Dismissal is proper where the court of first filing provides adequate remedies.").
 7 Permitting multiple litigations of nearly identical claims seeking the same remedies advances no
 8 judicial purpose and risks conflicting decisions in substantially similar cases, both of which the
 9 Ninth Circuit has cautioned district courts to avoid. *See id.* Indeed, these are the same interests
 10 that led the courts in *Pacemaker* and *Intersearch Worldwide* to apply the first-to-file rule to dismiss
 11 later-filed claims. There is no reason to deviate from that precedent here. At a minimum, however,
 12 the Court should stay Plaintiffs' Similac Go & Grow claims pending a final, non-appealable
 13 judgment in *Gutierrez*.

14 **B. Plaintiffs' PediaSure claims should be dismissed because they constitute
 15 impermissible claim-splitting.**

16 Plaintiffs' PediaSure-based claims should be dismissed under the doctrine prohibiting
 17 claim-splitting. Plaintiffs here are part of the certified classes of California PediaSure consumers
 18 who are challenging PediaSure's labeling by way of the same causes of action as here in an earlier-
 19 filed California state court action, including on the grounds that PediaSure allegedly contains too
 20 much added sugar. Plaintiffs cannot bring two separate suits challenging the same product label.

21 These circumstances fit squarely within what the claim-splitting doctrine prohibits. That
 22 doctrine safeguards defendants from the undue burden of facing repetitive litigation over identical
 23 or substantially similar claims. *Bojorquez v. Abercrombie & Fitch, Co.*, 193 F. Supp. 3d 1117,
 24 1123 (C.D. Cal. 2016). This makes good sense: Having spent the last six years disproving
 25 Plaintiffs' claims in *VanCleave*, Abbott should not have to do so all over again here. Nor should
 26 court resources be spent adjudicating claims that are already being adjudicated in another forum.

1 In applying this doctrine, courts assess whether the plaintiff was, or is, a class member in
 2 a previously certified class action involving the same transactional nucleus of facts. *See id.* at
 3 1123–25 (dismissing a later-filed class action in which the named plaintiff was a class member in
 4 an earlier-filed class action); *Cook v. C.R. Eng., Inc.*, No. CV 12-3515-GW CWX, 2012 WL
 5 2373258, at *5-6 (C.D. Cal. June 21, 2012) (same result where plaintiff was named in both
 6 actions). Specifically, courts in this Circuit apply a four-criteria test, considering whether (1) rights
 7 or interests established in an eventual judgment in the prior case would be destroyed or impaired
 8 by prosecution of the second action; (2) substantially the same evidence will be presented in the
 9 two actions; (3) the two suits involve the alleged infringement of the same right; and (4) the two
 10 suits arise out of the same transactional nucleus of facts. *See Bojorquez*, 193 F. Supp. 3d at 1125
 11 (citing *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201–02 (9th Cir.1982)).

12 While the “last of these criteria is the most important,” *Costantini*, 681 F.2d at 1202, all
 13 four are satisfied here. *First*, if Plaintiffs’ PediaSure claims are re-litigated here, Abbott’s rights
 14 arising from the verdict in *VanCleave* would be destroyed or at least impaired. Plaintiffs should
 15 not be permitted to re-try these losing claims here, because that would allow them to harass Abbott
 16 with repetitive actions based on the same claims arising from the same purchases. *Single Chip*
 17 *Sys. Corp. v. Intermec IP Corp.*, 495 F. Supp. 2d 1052, 1058 (S.D. Cal. 2007) (emphasizing
 18 primary objective of rule against claim-splitting is preventing plaintiffs from harassing
 19 defendants).

20 *Second*, substantially the same evidence has been or would be presented in both cases.
 21 Both cases challenge some of the same labeling statements, such as “Complete, Balanced
 22 Nutrition” and “Balanced Nutrition to Help Fill Gaps.” Compl. ¶ 19; *VanCleave* FAC ¶ 5. Indeed,
 23 those labeling statements were the primary focus of the trial that just ended in Abbott’s favor in
 24 Santa Clara County. *See VanCleave*, Verdict Form (Feb. 21, 2025). Testimony and documentary
 25 evidence about the meaning of and Abbott’s scientific substantiation for those statements was
 26 presented in Santa Clara County and would need to be presented again here. But that’s far from
 27 all. Beyond precisely what statements are challenged, other overlapping evidence includes sales
 28 data, regulatory evidence, consumer survey evidence, internal market research, evidence on the

1 benefits and other health effects of added sugar, evidence on PediaSure’s intended consumers, plus
 2 evidence on PediaSure’s 27 vitamins and minerals, three macronutrients, and other benefits—
 3 among countless other subjects. Several of the same fact witnesses would have to testify. So
 4 would experts on the same topics. And many of the same documents would need to be introduced
 5 in evidence here as in *VanCleave*. *See Costantini*, 681 F.2d at 1202 (finding factor met where
 6 evidence was substantially same across two cases even if second case included more evidence).

7 *Third*, both suits involve alleged infringement of the same consumer protection rights. *See*
 8 *VanCleave* FAC ¶ 18 (alleging violations of CLRA, the FAL, and UCL) *and see* Compl. ¶¶ 97,
 9 113, 137 (also alleging violations of the CLRA, FAL and UCL). Improper claim-splitting arises
 10 when both lawsuits allege infringement of similar rights. *Mendoza*, 30 F.4th at 887–89 (affirming
 11 dismissal of second action on improper claim-splitting grounds).

12 *Finally*, the claims arise from the same transactional nucleus of facts in both cases: the
 13 labeling of PediaSure and its sale to California consumers. *Single Chip Systems Corp.*, 495 F.
 14 Supp. 2d at 1059 (“The doctrine of claim splitting bars a party from subsequent litigation where
 15 the ‘same controversy’ exists.”) (citing *Nakash v. Super. Ct.*, 196 Cal. App. 3d 59, 68 (1987)).
 16 Causes of action need not be identical to originate from the same transactional nucleus of facts.
 17 *See Sargent v. MaineHealth*, No. 2:22-cv-00006-JAW, 2022 WL 2132272, at *11 (D. Me. June
 18 14, 2022) (applying claim-splitting doctrine where both cases centered on same employment
 19 relationship and alleged improper termination despite claims in each case being based on different
 20 legal grounds). Here, both the *VanCleave* case and the current action are based on purchases of
 21 PediaSure in California and alleged misstatements on the product’s label. *VanCleave* FAC ¶ 5;
 22 Compl. ¶ 14. The two complaints even allege that several of the same statements on PediaSure’s
 23 label are misleading. *VanCleave* FAC ¶ 5; Compl. ¶ 19. And for the same reasons. *VanCleave*
 24 FAC ¶ 16 (alleging that Abbott’s “health and wellness” labeling statements on PediaSure products
 25 are misleading given the product’s added sugar content); Compl. ¶ 110 (describing how these
 26 statements on PediaSure allegedly deceived reasonable consumers because the product contains
 27 added sugar). It is undeniable that both *VanCleave* and the present case originate from the same
 28 transactional nucleus of facts.

1 Courts in this Circuit regularly apply the claim-splitting doctrine in similar circumstances.
2 In *Bojorquez*, for example, the court dismissed the plaintiff’s claims on claim-splitting grounds
3 where the plaintiff was a member of a certified class in an earlier-filed lawsuit against the same
4 defendants and both cases involved similar factual allegations involving employment practices.
5 193 F. Supp. 3d at 1121–22, 1124, 1127. In its analysis, the court confirmed that being a member
6 of a certified class in a pending class action qualifies a plaintiff as a “party” for purposes of the
7 claim-splitting analysis. *Id.* at 1124–25. Likewise, in *Greene v. H & R Block Eastern Enterprises, Inc.*,
8 the court dismissed a later-filed class action under the claim-splitting doctrine plaintiffs in the
9 later-filed action had not opted out of the certified class in the first-filed action. 727 F. Supp. 2d
10 1363, 1367–68 (S.D. Fla. 2010).

11 Dismissal is the appropriate remedy here too, because, as in *Bojorquez* and *Greene*, the
12 Plaintiffs here are class members in a prior filed lawsuit against the same defendant based on the
13 same transactional facts (their purchases of PediaSure in California since 2021). Put simply,
14 Plaintiffs could have opted out of the *VanCleave* classes but did not, they lost their PediaSure
15 damages claims last week, and they should not have a second bite at the apple. At a minimum,
16 though, the Court should stay Plaintiffs' PediaSure claims pending a final, non-appealable
17 judgment in *VanCleave*.

C. Plaintiffs' claims should be dismissed for failure to state a claim.

19 Beyond their procedural shortcomings, Plaintiffs' claims fail for failure to state a claim.
20 Plaintiffs assert three liability theories:

1 2. **DHA Theory:** Plaintiffs allege that several statements on both products' labels are
 2 false or misleading because the ingredient DHA purportedly "does not support
 3 brain development." *Id.* ¶¶ 53–58. Specifically, those statements are "DHA" and
 4 "Brain Development" on Similac Go & Grow (*id.* ¶¶ 16, 42) and "DHA Omega-3"
 5 on PediaSure (*id.* ¶¶ 19, 42).

6 3. **"#1 Pediatrician Recommended Brand" Theory:** Only as to PediaSure,
 7 Plaintiffs challenge that the labeling statement "#1 Pediatrician Recommended
 8 Brand" is false or misleading because a handful of publications authored by a
 9 handful of doctors have questioned "toddler formulas." *Id.* ¶¶ 51–52.

10 All three theories fail because Plaintiffs have failed to allege facts sufficient to satisfy Rule
 11 12(b)(6), much less Rule 9(b). In addition, Plaintiffs' claim for injunctive relief should be
 12 dismissed for the independent reason that Plaintiffs lack standing.

13 1. **Plaintiffs have not satisfied Rules 12(b)(6) or 9(b).**

14 Because all of Plaintiffs' claims sound in fraud, the Complaint must satisfy both the general
 15 plausibility standard under Rule 12(b)(6) and the more demanding standard under Rule 9(b)
 16 requiring that the Complaint "state with particularity the circumstances constituting fraud."⁵ The
 17 Rule 9(b) standard requires the Complaint to plead facts setting out not only "**what** is false or
 18 misleading about the purportedly fraudulent statement" but also "**why** it is false." *See Davidson*
 19 *v. Kimberly-Clark Corp.*, 889 F.3d 956, 964 (9th Cir. 2018) (emphasis added); *Becerra v. Dr.*
 20 *Pepper/Seven Up, Inc.*, 945 F.3d 1225, 1228 (9th Cir. 2019). Further, it is not enough that
 21 Plaintiffs allege that they were misled, because at the pleading stage the Court applies an
 22 "objective" standard that demands more than "a mere possibility" that the challenged labeling
 23 statements "might conceivably be misunderstood by [a] few consumers viewing it in an
 24 unreasonable manner." *Becerra*, 945 F.3d at 1228 (citation omitted). Rather, Plaintiffs must

25
 26 ⁵ Even if fraud is not an element of a particular claim, when a plaintiff "allege[s] a unified course
 27 of fraudulent conduct and rel[ies] entirely on that course of conduct as a basis of [his] claim[s],"
 28 Rule 9(b) applies. *Kearns*, 567 F.3d at 1125 (affirming application of Rule 9(b) to claims under
 California consumer protection statutes that "sound in fraud"). Here, all of Plaintiffs' claims—
 including their breach of warranty claims—rest on the same alleged "unified course of fraudulent
 conduct" such that Rule 9(b) applies to all claims.

1 plausibly allege that a “significant portion” of reasonable consumers could be misled. *See Lavie*
 2 *v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 508 (2003). When applying this standard, courts
 3 must account for the “contextual inferences regarding the product” that a reasonable consumer
 4 would make. *Moore v. Trader Joe’s Co.*, 4 F.4th 874, 882 (9th Cir. 2021).

5 None of the three liability theories meet these standards.

6 **a. Plaintiffs’ added sugar theory.**

7 Plaintiffs’ added sugar theory should be dismissed for two independent reasons: (1) it fails
 8 under a recent Ninth Circuit case, *Davidson v. Sprout Foods, Inc.*; and (2) Plaintiffs have failed to
 9 plead that the products’ added sugar content renders any of the challenged statements misleading
 10 to reasonable consumers.

11 *First*, Plaintiffs’ added sugar theory is indistinguishable from *Davidson v. Sprout Foods,*
 12 *Inc.*, 106 F.4th 842 (9th Cir. 2024). There, the Ninth Circuit affirmed dismissal of a strikingly
 13 similar added sugar theory. *Id.* at 853. Plaintiffs in *Sprout Foods* likewise alleged that certain
 14 statements on the label of defendant’s pouches of pureed food for children were misleading and
 15 that the pouches were “harmful” because of added sugar, and that some commentators have
 16 doubted whether the pouches are necessary or beneficial to children’s nutritional health. *Id.* at
 17 847. In rejecting this theory, the Ninth Circuit held that such allegations were insufficient under
 18 Rule 9(b). *Id.* at 853. The Ninth Circuit reasoned that “Plaintiffs’ allegations regarding harm are
 19 largely unspecific to Sprout’s products” and were “largely speculative.” *Id.* As for the pouches’
 20 sugar content, the Ninth Circuit found that allegations insufficient because they “lack[ed] context”
 21 and because plaintiffs did “not explain at what level sugars become harmful or why the levels of
 22 sugar in these products, in particular, could cause harm.” *Id.*

23 So too here. Plaintiffs’ allegations of harm because of the products’ added sugar content
 24 are entirely unspecific to Similac Go & Grow and PediaSure products. *See* Compl. ¶¶ 44–50.
 25 Similarly unconnected to the products at issue are Plaintiffs’ generalized allegations of harm
 26 regarding added sugar generically. *Id.* And while Plaintiffs purport to list the amount of added
 27 sugar in each at-issue product, as in *Sprout Foods* they do not even attempt say at what amount
 28 the added sugar content becomes harmful, with one exception: they say that for children under 2,

1 health authorities “recommend” no added sugar. *Id.* ¶¶ 44, 49. This allegation, though, cannot
 2 save Plaintiffs from dismissal under *Sprout Foods*. For one, PediaSure is intended for children
 3 aged 2–13 (except under a doctor’s guidance), so Plaintiffs’ allegations of added sugar
 4 recommendations for children under 2 is irrelevant to Plaintiffs’ PediaSure claims. As for Similac
 5 Go & Grow, that some health authorities *generally* “recommend” avoiding added sugar hardly
 6 means that the added sugar *in Similac Go & Grow* is harmful for children. *Id.* Just as in *Sprout*
 7 *Foods*, Plaintiffs have failed to allege facts supporting “why the levels of sugar in these products,
 8 *in particular*, could cause harm.” 106 F.4th at 853 (emphasis added).

9 Thus, under *Sprout Foods* alone, the Court should dismiss Plaintiffs’ added sugar theory.

10 **Second**, and independently, this is a false labeling case. Even if the amount of added sugar
 11 in Similac Go & Grow or PediaSure were too high, that would not be enough to state a claim.
 12 Rather, Plaintiffs must adequately allege that the amount of added sugar in the products somehow
 13 rendered the challenged labeling statements false or misleading. Here, they have not and cannot.

14 As for the three Similac Go & Grow statements challenged under this theory—“Toddler
 15 Drink,” “360 Total Care,” and “12-36 months”—none so much as mentions added sugar. Nowhere
 16 in Plaintiffs’ Complaint do they even attempt to connect these statements to added sugar. *E.g.*,
 17 Compl. ¶¶ 44–50. Plaintiffs’ conclusory allegations that they are nonetheless false or misleading
 18 are insufficient. The same goes for the two PediaSure statements challenged under this theory:
 19 “Complete, Balanced Nutrition” and “Balanced Nutrition to Help Fill Gaps.” Neither mentions
 20 sugar, and Plaintiffs have not alleged even in conclusory terms how these statements are rendered
 21 false or misleading by PediaSure’s added sugar content. *Id.*

22 Nor have Plaintiffs explained why reasonable consumers would be misled by these
 23 statements given the express disclosure of added sugar in the federally-mandated Nutrition Facts
 24 Panel on every product label. *See Ex. A, Ex. B.* Indeed, any reasonable consumer interested in
 25 Similac Go & Grow’s or PediaSure’s sugar content could “review the product’s ingredient list to
 26 dispel or ameliorate any confusion that might be raised by” the challenged statements. *Cheslow*
 27 *v. Ghirardelli Chocolate Co.*, 497 F. Supp. 3d 540, 546 (N.D. Cal. 2020); *McGinity v. Procter &*
 28

1 *Gamble Co.*, 69 F.4th 1093, 1098–99 (9th Cir. 2023). Nothing in Plaintiff’s Complaint is sufficient
2 to override that commonsense principle.

b. Plaintiffs' DHA theory.

4 Plaintiffs' second liability theory is that "DHA does not support brain development."
5 Compl. ¶¶ 53–58. Again, though, this is a false labeling case. Accordingly, Plaintiffs must
6 adequately allege that the challenged labeling statements are rendered false or misleading to
7 reasonable consumers because "DHA does not support brain development." They cannot.

8 As for Similac Go & Grow, there are two challenged statements pertinent to Plaintiffs' 9 DHA theory. *First*, Plaintiffs challenge the statement "DHA," which appears on the bottom half 10 of the front of the label. Compl. ¶ 17. There is nothing remotely false or misleading about this 11 statement. Simply put, Plaintiffs do not allege (nor could they) that Similac Go & Grow does not 12 contain DHA, which is all that this statement implies. *Second*, Plaintiffs challenge the statement 13 "Brain Development," which appears on the top right of the front of the label. *Id.* Plaintiffs' 14 theory seems to be that this reference to "Brain Development" has something to do with DHA. 15 Compl. ¶ 16. But no reasonable consumer could conclude as much. The words "Brain 16 Development" and "DHA" are separated by more than half the label, including the product name, 17 "by Similac," "toddler drink," and several differently colored bars, among other visual elements. 18 Compl. ¶ 17. No reasonable consumer would surmise that the reference to "Brain Development" 19 is connected to "DHA."

20 As for PediaSure, there is only one challenged statement pertinent to Plaintiffs' DHA
21 liability theory: "DHA Omega-3." But Plaintiffs admit that DHA is "an omega-3 fatty acid," *see*
22 Compl. ¶ 54, and they do not contest that PediaSure contains DHA, which is all that this statement
23 implies. And nowhere on the PediaSure label do the words "brain development" appear—even
24 unconnected to the words "DHA Omega-3." Ex. B. Plaintiffs' allegations that PediaSure labeling
25 is false or misleading on this front are thus even more lacking than are their parallel allegations
26 concerning Similac Go & Grow.

27 In sum, it matters not whether DHA fails to “support brain development,” as Plaintiffs
28 claim, because Plaintiffs have not adequately alleged that reasonable consumers would conclude

1 that either product's labels so much as imply otherwise. Plaintiffs have therefore failed to
2 adequately allege how or why these statements are false or misleading, as Rule 9(b) requires.⁶

c. Plaintiffs' "#1 Pediatrician Recommended Brand" theory.

4 Plaintiffs' final liability theory applies only to PediaSure. Specifically, Plaintiffs posit that
5 the statement "#1 Pediatrician Recommended Brand" is misleading. *See* Compl. ¶¶ 51-52.
6 Plaintiffs' sole basis for this allegation is that two articles have reportedly advised against "toddler
7 formula." *See* Ex. C, Older Infant-Young Child "Formula"; Ex. D, Decreasing Community
8 Toddler Formula Use.

9 But both of those articles are about “toddler formulas”—which PediaSure is not. For
10 example, the article titled *Older Infant-Young Child “Formulas”* discusses only “liquid nutritional
11 products referred to as ‘formulas’ [that] have been developed for the older infant and toddler of
12 separate age ranges and increasingly promoted by manufacturers in North America and elsewhere,
13 with different identities including ‘transition formulas,’ ‘follow-on’ or ‘follow-up formulas,’ or
14 ‘weaning formulas,’ typically for children 6 to 24 months of age, and ‘toddler milks or formulas,’

6 In passing, Plaintiffs allege that the Similac Go & Grow challenged statements “DHA” and
7 “Brain Development” are impermissible “nutrient content” claims under FDA regulations barring
8 such claims on products intended for children under 2. See Compl. ¶¶ 56–58. But neither
9 statement qualifies under either subsection of the FDA regulations in effect during the relevant
10 timeframe defining “nutrient content” claims: 21 C.F.R. § 101.13(b)(2)(i)–(ii). As for “DHA,”
11 subsection (i) applies to statements that “[d]escribe[] the food or an ingredient therein in a manner
12 that suggests that a nutrient is absent or present ***in a certain amount*** (e.g., ‘high in oat bran’).”
13 (emphasis added) But this challenged statement does not refer to any “certain amount” of DHA
14 in Similac Go & Grow. Put differently, the reference to “DHA” on Similac Go & Grow is unlike
15 the example given in subsection (i)—“high in oat bran”—because it simply mentions the
16 ingredient without characterizing it as “high” or otherwise mentioning that it is absent or present
17 in a “certain amount.” Subsection (ii) is likewise inapplicable to the statement “DHA” because
18 there is no suggestion that either product “because of its nutrient content, may be useful in
19 maintaining healthy dietary practices.” *Id.* § 101.13(b)(2)(ii). Rather, the labels just imply that
20 the products contain DHA. The example given in subsection (ii)—“healthy, contains 3 grams (g)
21 of fat”—is also instructive. In contrast to the subsection (ii) example, the statement “DHA” lacks
22 a phrase such as “healthy” or some other such suggestion that the nutrient “may be useful in
23 maintaining healthy dietary practices.” *Id.* As for the other pertinent challenged statement, “Brain
24 Development,” it does not qualify under either subsection (i) or (ii) because it does not even refer
25 to any “nutrient,” which it must to qualify as a nutrient content claim. Because neither challenged
26 statement qualifies as a “nutrient content” claim under the FDA regulations in effect at the time,
27 they are not impermissible even on products intended for children under 2.

1 ‘growing-up milks,’ or ‘young child milks’ generally for children 12 to 36 months of age.” *See*
 2 Ex. C at 1–2. That is not PediaSure, which is a nutritional supplement primarily designed for
 3 children aged 2–13. *See* Ex. B. In contrast, the cited articles are about drinks closer to Similac
 4 Go & Grow. But that Similac Go & Grow is arguably among the “toddler formulas” referenced
 5 by these articles is beside the point, because only PediaSure includes the challenged statement.
 6 Compl. ¶¶ 16, 19.

7 Regardless, Plaintiffs’ suggestion that even on-topic articles could provide adequate
 8 support for an allegation that PediaSure is not the “#1 Pediatrician Recommended Brand” falls far
 9 short. Whether or not some pediatricians or even health organizations have questioned a class of
 10 products does not mean that one of those products is not the most recommended brand among
 11 them. Plaintiffs’ suggestion otherwise is a *non-sequitur*.

12 Thus, Plaintiffs have failed to adequately allege how or why this statement is false or
 13 misleading, as Rule 9(b) requires.

14 **2. Plaintiffs lack standing to pursue injunctive relief.**

15 Plaintiffs’ request for injunctive relief fails for two additional reasons, each of which on its
 16 own merits dismissal.

17 *First*, Plaintiffs lack standing to pursue injunctive relief under Federal Rule of Civil
 18 Procedure 12(b)(1) because they do not plausibly allege any “real or immediate threat that [they]
 19 will be wronged again” in a similar way. *Urban v. Tesla, Inc.*, 698 F. Supp. 3d 1124, 1134 (N.D.
 20 Cal. 2023) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)). Purely past wrongs
 21 alone are insufficient to establish the injury-in-fact required for Article III standing. *See Kimberley-*
22 Clark Corp., 889 F.3d at 967 (citing *Lyons*, 461 U.S. at 102–03). Rather, the Ninth Circuit has
 23 identified two potential future harms that could justify injunctions in product labeling cases: (1)
 24 the plaintiff’s inability to rely on the product’s labeling in the future, preventing them from
 25 purchasing the product even if desired; and (2) the likelihood that consumers will mistakenly
 26 believe the product has been improved, leading to future purchases and repeated injury. *See id.* at
 27 969–70.

28

1 Plaintiffs fail to plausibly allege either scenario. Although Plaintiffs express a desire to
 2 repurchase the products in conclusory terms, Compl. ¶¶ 29–30, they do not allege that they have
 3 children who are still young enough to use the products in the future. The Court should not give
 4 Plaintiffs the benefit of the doubt on this point. *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992,
 5 998 (9th Cir. 2010) (courts are not obligated to accept as true any merely conclusory allegations
 6 or those that are based on unreasonable inferences). Unlike broader-use consumer products,
 7 plausibly alleging risk of future harm associated with purchases of age-specific products, such as
 8 those at issue, requires alleging that the Plaintiffs have an age-appropriate consumer in their
 9 household. *See In re Evenflo Co., Inc. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 707 F. Supp. 3d
 10 103, 140 (D. Mass. 2023) (rejecting plaintiffs' hypothetical standing contention premised on
 11 unborn children or grandchildren); *see also In re Coca-Cola Prods. Mktg. & Sales Pracs. Litig.*
 12 (No. II), No. 20-15742, 2021 WL 3878654, at *1–2 (9th Cir. Aug. 31, 2021) (reversing district
 13 court's conclusion that consumer plaintiffs had standing to seek injunction because standing for
 14 injunctive relief cannot be premised on “abstract interest in compliance with labeling
 15 requirements”).

16 In any case, the Complaint demonstrates that Plaintiffs are aware of the supposed “truth”
 17 about the products and thus do not need to rely on the labels' representations about the product
 18 and instead can just simply check the products' nutrition label for ingredients. *See Prescott v.*
 19 *Abbott Lab'ys*, 736 F. Supp. 3d 775, 786 (N.D. Cal. 2024) (plaintiffs lacked standing for injunctive
 20 relief considering awareness of specific ingredients and alleged associated health risks in products,
 21 negating “real and immediate threat of repeated injury”).⁷ Plaintiffs do not suggest they face a risk
 22 of future harm; rather, their allegations are based solely on specific ingredients in the Defendant's
 23 products. Plaintiffs are aware that these ingredients are present in Similac Grow & Go and
 24 PediaSure, and the Complaint indicates that they are now informed of the alleged health risks

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 27 ⁷ Alleging this case as a class action does not solve Plaintiffs' standing problem. The possibility
 28 that some members of the putative class might have standing is not considered because standing
 must be measured solely on the named plaintiffs. *Cunha v. IntelliCheck, LLC*, 254 F. Supp. 3d
 1124, 1138 (N.D. Cal. 2017) (plaintiffs in a class action cannot rely on the potential future injury
 of unnamed class members to establish standing for injunctive relief).

1 associated with those ingredients. *See* Compl. ¶¶ 38–39. Consequently, this is not a case where
 2 plaintiffs must depend on the manufacturer’s future representations about the product. Instead,
 3 they can simply review the ingredients list to determine whether Similac Grow & Go and
 4 PediaSure contain added sugar and the other ingredients at issue. Therefore, the plaintiffs have
 5 not demonstrated any “real and immediate threat of repeated injury” that would necessitate an
 6 injunction. *See Kimberly-Clark Corp.*, 889 F.3d at 967 (citation omitted). In short, Plaintiffs have
 7 not plausibly alleged standing for injunctive relief under either available prong.

8 *Second*, and independently, Plaintiffs fail to plausibly allege facts showing the absence of
 9 an adequate remedy at law. *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020)
 10 (affirming dismissal of plaintiff’s claims for equitable relief under UCL and CLRA because
 11 plaintiff failed to adequately allege a lack of legal remedy). At the pleading stage, courts require
 12 plaintiffs seeking equitable relief to allege facts describing why monetary damages will not fully
 13 compensate them. *Gibson v. Jaguar Land Rover N. Am., LLC*, No. CV 20-00769-CJC(GJSx),
 14 2020 WL 5492990, at *3 (C.D. Cal. Sept. 9, 2020) (“[C]ourts generally require plaintiffs seeking
 15 equitable relief to allege some facts suggesting that damages are insufficient to make them
 16 whole.”) (collecting cases); *see also Sonner*, 971 F.3d at 844. Here, the Complaint includes no
 17 such facts. To the contrary, Plaintiffs’ allegations on this front are merely threadbare assertions
 18 that damages are insufficient. *See* Compl. ¶ 69. The Court should therefore dismiss Plaintiffs’
 19 claim for injunctive relief on this basis as well.

20 **V. CONCLUSION**

21 For these reasons, Abbott respectfully requests that the Court dismiss Plaintiffs’
 22 Complaint.

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Respectfully submitted,

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